

## **REMARKS**

Claims 24 and 25 are amended. Claims 24-30 remain in the application for consideration. In view of the following remarks, Applicant respectfully requests reconsideration and allowance of the subject application.

### **Claim Objection**

Claim 24 is objected to because it depends on a cancelled claim. Applicant has amended claim 24 so that it is now in independent form. As such, Applicant requests that the objection be withdrawn. Applicant notes that claim 24, as amended, and claims 25-30 were restricted from the parent application (Application S/N 08/568,578 – now U.S Patent No. 6,282,561).

### **§ 101 Rejections**

Claims 25-30 are rejected 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the Office argues that claim 25 is not directed to tangible subject matter “because the software program product claims do not result in a practical application producing a useful, concrete and tangible result to form the basis of statutory subject matter under 35 USC 101.” Applicant respectfully disagrees and traverses this rejection.

It is established law that an abstract idea, by itself, is considered to be unpatentable subject matter under § 101. See, e.g., AT&T Corp. v. Excel Communications, Inc., 172 F.3d 1352, 1355 (1999) (pointing out that laws of nature, natural phenomena, and abstract ideas have generally been identified by the Supreme Court as unpatentable subject matter). However, if such an idea is taken out of the abstract and employed in some type of process that achieves a

1 “new and useful end”, the *process is* patentable subject matter, even if the idea by  
2 itself would not be. Id. at 1357. Thus, the relevant inquiry under § 101 becomes -  
3 - Is the idea being applied to achieve a useful end? Id. If so, then the § 101  
4 threshold is satisfied. Id.

5 With claim 25, the computer-implemented method comprises the computer-  
6 implemented steps of “negotiating between the resource planner and activities to  
7 reserve shares of the resources”, as claimed and “renegotiating between the  
8 resource planner and the activities to change reservations of resources on behalf of  
9 the activities”, as claimed. This negotiating “*to reserve shares*” and renegotiating  
10 “*to change reservations*” clearly achieves a “new and useful end”. (emphasis  
11 added). As such, the §101 threshold is satisfied and claims 25-30 are in condition  
12 for allowance.

### 13 14 **§ 102 Rejections**

15 Claims 25-30 are rejected under U.S.C. 102(e) as being anticipated by U.S.  
16 Patent No. 5,742,772 to Sreenan (hereinafter “Sreenan”).

17 Claims 25-30 are also rejected under U.S.C. 102(e) as being anticipated by  
18 U.S. Patent No. 5,634,006 to Baugher et al. (hereinafter “Baugher”).

### 19 20 **The § 102 Rejections Based on Sreenan**

21 Claim 25, as amended [added language in bold italics], recites in a  
22 computer system having resources and a resource planner for granting reservations  
23 of amounts of resources to activities performed on the computer system, a  
24 *computer-implemented* method comprising:  
25

- negotiating between the resource planner and activities to reserve shares of the resources with the resource planner on behalf of the activities; and
- in view of changing resource usage or requirements, renegotiating between the resource planner and the activities to change reservations of resources on behalf of the activities to reflect the changing resource usage or requirements.

In making out the rejection of this claim, the Office argues that Sreenan discloses all the subject matter of this claim. Specifically, the Office relies on Columns 5 (lines 45-62) and 7 (line 59) through 8 (line 18) as disclosing “a computer system having resources and a resource planner”, as claimed. The Office then relies on Column 2 (lines 10-26) as disclosing “negotiating”, as claimed and Columns 2 (lines 10-26) and 10 (lines 27-63) as disclosing “in view of changing resource usage or requirements, renegotiating”, as claimed.

Applicant respectfully disagrees with the Office’s argument and submits that the Office has mischaracterized Columns 2 and 10, which neither disclose nor suggest “in view of changing resource usage or requirements, renegotiating”, as claimed.

First, Column 2 (lines 10-26) of Sreenan discusses a quality of service (QOS) contract negotiation process involving a plurality of clients in which a client may alter their QOS specifications and “retry if the resource manager denies them admission because of lack of available resources”. This is very different from the subject matter of this claim. Specifically, to “retry” in Sreenan cannot be equated with “renegotiating ... to change reservations” because in Sreenan, no specifications have yet been negotiated such that they can be changed with a “retry”. In other words, if the client is retrying a negotiation, the client is not “renegotiating...to change” at all. Furthermore, the negotiating in Sreenan is not

1 “between the resource planner and the activities” but rather between the bridge  
2 service and the plurality of clients. Finally, even if to “retry” in Sreenan could be  
3 equated with “renegotiating”, which it cannot, it occurs “because of lack of  
4 available resources”, not “in view of changing resource usage or requirements”, as  
5 claimed. This excerpt is reproduced below for the Office’s convenience (emphasis  
6 added):

7  
8 According to one aspect of the invention, an electronic bridge  
9 resource management system comprises a programmatically-implemented  
10 processing system having bridge service and resource manager software.  
11 The bridge service *interfaces with a plurality of clients* and receives a  
12 quality of service (QOS) specification from each of the clients. The  
13 resource manager receives the QOS specification from the bridge service  
14 and distributes at least one QOS constraint associated with said QOS  
15 specification across the flow processing modules of a channel. The  
16 resource manager then determines the resource requirements for each of  
17 the flow processing modules, and determines whether bridge resources  
18 can be allocated to meet the QOS specification. As part of the QOS  
19 contract negotiation process, the clients *may alter their QOS*  
20 *specifications and retry if the resource manager denies them admission*  
21 *because of a lack of available resources.*

22  
23 Second, Column 10 (lines 27-63) of Sreenan discusses renegotiating “start  
24 time and duration” parameters which it describes as “analogous to changing the  
25 meeting time or extending its length if the room is available”. This excerpt also  
indicates that when the bridge service receives a request from a client it makes a  
request to the reservation manager, which in turn checks with the QOS manager to  
determine any overlap with current allocations. This is very different from the  
subject matter of this claim. Specifically, this claim recites “renegotiating ... to  
change reservations of resources”, not to change client “start time and duration”  
parameters, as in Sreenan. Furthermore, even if Sreenan did disclose renegotiating

1 "... to change reservations of resources", which it does not, nothing discusses  
2 renegotiating "in view of changing resource usage or requirements", as claimed.  
3 Finally, the renegotiating in Sreenan is not "between the resource planner and the  
4 activities", as claimed but rather between the bridge service and a plurality of  
5 clients. This excerpt is reproduced below for the Office's convenience (emphasis  
6 added):

7  
8 In order to make an advance reservation, *two parameters are*  
9 *needed: start time and duration.* The start time indicates either an  
10 immediate start (the default) or some future occasion. A duration defines  
11 the maximum time length and is necessary for both immediate and future  
12 requests so that the bridge 10 can capitalize on resource sharing and  
13 utilization. *Note however that both of these parameters can be*  
14 *renegotiated, analogous to changing the meeting time or extending its*  
15 *length if the room is available.* These parameters were described as part  
16 of the group data structure and are passed as part of the call to create the  
17 group. A key issue here is figuring out how much resources will be  
18 needed, as this is normally done as each client joins a channel. The  
19 accuracy of this process depends on how much detail the reserver can  
20 provide. The Reservation Manager 72 uses that information to derive an  
21 estimate. As a minimum the reserver is expected to indicate the number of  
22 clients which are expected to participate in the group and the channels to  
23 be used. This allows for the use of transmit and receive FPMs as well as  
24 interconnecting flows. If the reserver indicates additional FPMs then the  
25 estimate can be improved.

18 In terms of the resource management architecture a set of  
19 interactions are involved. *When the Bridge Service 60 receives a request*  
20 *with a future start time specified it makes a request to the Reservation*  
21 *Manager 72.* The Reservation Manager 72 operates by building up a  
22 resource request based on the information provided by the reserver. It  
23 consults with the FPM controllers 64, 66, 68 to provide resource  
24 estimates, and then checks with the QOS Manager 70 to determine any  
25 overlap with current allocations. At this point, a reply is sent to the  
reserver indicating whether the necessary resources will be available. If  
the reserver subsequently provides additional information such as specific  
FPMs, this internal negotiation process is repeated. Note that when the  
start time for a group arrives, responsibility for it is transferred from the  
Reservation Manager 72 to the QOS Manager 70.

1 Accordingly, in view of the above discussion, this claim is not anticipated  
2 by Sreenan and is allowable.

3 **Claims 26-30** depend from claim 25 and are allowable as depending from  
4 an allowable base claim. These claims are also allowable for their own recited  
5 features which, in combination with those recited in claim 25, are neither disclosed  
6 nor suggested by the reference of record.

7  
8 **The § 102 Rejections Based on Baugher**

9 In making out the rejection of **claim 25**, reproduced above, the Office  
10 argues that Baugher discloses the subject matter of this claim. Specifically, the  
11 Office relies on Columns 2 (lines 8-22) and 6 (line 64) through 7 (line 8) as  
12 disclosing “a computer system having resources and a resource planner”, as  
13 claimed. The Office then relies on Column 2 (lines 8-22) and 8 (line 66) through  
14 9 (line 11) as disclosing “negotiating”, as claimed and Columns 6 (lines 41-56)  
15 and 9 (lines 12-19) as disclosing “in view of changing resource usage or  
16 requirements, renegotiating”, as claimed.

17 Applicant respectfully disagrees with the Office’s argument and submits  
18 that the Office has mischaracterized Columns 2 and 10, which neither disclose nor  
19 suggest “in view of changing resource usage or requirements, renegotiating”, as  
20 claimed.

21 First, Column 6 (lines 41-56) of Baugher discusses negotiating QOS  
22 parameters with respect to a user connecting to a communication network. These  
23 parameters include options such as connection delay, throughput and the like.  
24 Furthermore, this excerpt specifically states “[o]nce the options have been  
25 negotiated, they remain that way through the life of the connection.” This simply

1 has nothing to do with the subject matter of this claim. Specifically, this claim  
2 recites "renegotiating ... to change reservations of resources", not negotiating  
3 options with respect to a communication network connection. Furthermore, this  
4 excerpt makes no mention at all of renegotiating. In fact, in so far as it states  
5 "[o]nce the options have been negotiated, they remain that way through the life of  
6 the connection", it actually teaches directly away from "renegotiating...to  
7 change", as claimed.

8         Second, Column 9 (lines 12-19) of Baugher indicates that an application is  
9 able to increase or decrease its bandwidth allotment via a bandwidth manager  
10 command. Applicant fails to see how a bandwidth allocation command can be  
11 equated with "negotiating between the resource planner and activities", as claimed  
12 and "in view of changing resource usage or requirements, renegotiating", as  
13 claimed. As far as Applicant can discern, this excerpt simply describes a  
14 mechanism by which an application can change its bandwidth with respect to a  
15 communications network. Applicant respectfully submits that if the Office wishes  
16 to maintain this rejection, it provide some indication of which features of this  
17 excerpt it is relying on with respect to the claimed subject matter. This excerpt is  
18 reproduced below for the Office's convenience:

19  
20         An application increases its bandwidth allotment via a bandwidth  
21 manager command allocate-bandwidth which, when successful, results in  
22 that application's rate increasing by the requested amount, averaged or  
23 maximum over a negotiated time interval. An application is able to  
24 decrease its bandwidth allotment using the bandwidth manager command,  
25 deallocate-bandwidth, which results in the application's rate being  
decreased by the released amount.

1 Accordingly, in view of the above discussion, this claim is not anticipated  
2 by Baugher and is allowable.

3 **Claims 26-30** depend from claim 25 and are allowable as depending from  
4 an allowable base claim. These claims are also allowable for their own recited  
5 features which, in combination with those recited in claim 25, are neither disclosed  
6 nor suggested by the reference of record.

7  
8 **Conclusion**

9 All of the claims are in condition for allowance. Accordingly, Applicant  
10 requests a Notice of Allowability be issued forthwith. If the Office's next  
11 anticipated action is to be anything other than issuance of a Notice of Allowability,  
12 Applicant respectfully requests a telephone call for the purpose of scheduling an  
13 interview.

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16 Respectfully Submitted,

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By: 

Rich Bucher  
Reg. No. 57,971  
(509) 324-9256